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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 WALKER RIVER PAIUTE TRIBE,
15 Plaintiff-Intervenor,
16 v.

IN EQUITY NO. C-125-ECR
SUBFILE NO. C-125-B

17 WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.
18 Defendants.

**STATE OF CALIFORNIA'S
RESPONSE TO MOTION OF
THE UNITED STATES AND
WALKER RIVER PAIUTE
TRIBE TO ADOPT CASE
MANAGEMENT ORDER**

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20 WALKER RIVER PAIUTE TRIBE,
Counterclaimant,
21 v.
22 WALKER RIVER IRRIGATION DISTRICT, et al.,
23 Counterdefendants.
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26 On January 24, 2000, the State of California Department of Fish and Game and
27 State Water Resources Control Board ("State of California" or "California") concurred in the
28

1 Joint Motion Concerning Case Management filed by the State of Nevada and the Walker River
2 Irrigation District, and urged this court to adopt and sign the Order Concerning Case
3 Management proposed by those parties. In this Response, the State of California will briefly
4 respond to several points raised in the Motion of the United States and Walker River Paiute Tribe
5 to Adopt Case Management Order and the proposed Case Management Order ("CMO") filed on
6 or about January 20, 2000.

7 First, in the proposed CMO at page 5, paragraph 4, line 17, the words
8 "MAMMOTH TIMES" should be substituted for the words "REVIEW-HERALD." Counsel for
9 the State of California is informed that the REVIEW-HERALD recently ceased publication, and
10 that the MAMMOTH TIMES in Mammoth Lakes, California, is the appropriate newspaper for
11 publication of service on California residents, assuming such publication of service becomes
12 appropriate in the future.

13 Second, the proposed CMO at paragraph 5, page 5, imposes upon, *inter alia*, the
14 State of California, the duty to identify and provide (in electronic format to the extent available)
15 the United States and the Tribe "all information in their possession, custody or control
16 identifying all individuals and entities with any claims to surface water and/or ground water in
17 the Walker River Basin" and a duty to supplement such information *within two weeks* of any
18 modification or change. The State of California, will, of course, respond cooperatively to
19 appropriate discovery requests from the United States and Tribe to appropriate California state
20 agencies, pursuant to the provisions of the Federal Rules of Civil Procedure. However,
21 California objects to the two-week supplemental informational requirement as impracticable and
22 inconsistent with Federal Rule of Civil Procedure 26(e)(1), which imposes a duty to supplement
23 or correct past disclosures of information *at appropriate intervals* if the disclosing party learns
24 that in some *material* respect the information disclosed is incomplete or incorrect and if the
25 additional or corrective information has not otherwise been made known to the other parties
26 during the discovery process and in writing. The United States and the Tribe have not shown the
27 necessity to impose a disclosure requirement which is inconsistent with Rule 26(e).
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1 Notably, the State of California does *not* possess information which would
2 identify *all* individuals and entities with any claims to surface water and/or ground water in the
3 Walker River Basin. The State Water Resources Control Board ("SWRCB") maintains records
4 of some, but not all, persons who claim a right to divert and use water in the Walker River Basin.

5 The SWRCB has records of all parties who hold a permit or license to appropriate
6 surface water in the Walker River watershed for appropriations initiated after December 19,
7 1914. However, persons who hold a riparian right or an appropriative right initiated prior to
8 December 19, 1914 (a pre-1914 appropriative right), are not required to obtain a permit or license
9 from the State. Some riparians and pre-1914 appropriators have filed Statements of Water
10 Diversion and Use with the SWRCB pursuant to Water Code section 5100. But the failure to file
11 a Statement of Water Diversion and Use does not deprive riparians or pre-1914 appropriators of
12 any water rights that they may hold. Therefore, the SWRCB's records of those who have filed
13 Statements of Water Diversion and Use do not include all parties who may hold a riparian or pre-
14 1914 appropriative water right to the diversion and use of surface water.

15 Moreover, parties who pump ground water in California may or may not have to
16 obtain a permit from the SWRCB. Only ground water that is determined to be part of a
17 subterranean stream is subject to the same application, permit, and license procedure which
18 applies to diversion and use of surface water. (California Water Code section 1200 *et seq.*)
19 Other ground water is considered to be "percolating ground water" and is not subject to the rules
20 that apply to appropriation of surface water. (*City of Los Angeles v. Pomeroy* (1899) 124 Cal.
21 597, 632, 57 P. 585.) Thus, the SWRCB does not maintain records of all parties who may claim
22 a right to the use of percolating ground water.

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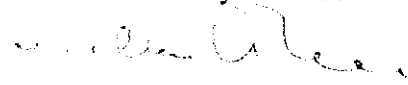
1 The State of California urges the adoption of the Case Management Order
2 proposed by the State of Nevada and the Walker River Irrigation District. Should the court
3 instead be inclined to adopt the Case Management Order proposed by the United States and
4 Tribe, the State of California suggests that it be modified as outlined above.

5 DATED: February 18, 2000

6 Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

Re: *United States v. Walker River Irrigation District, et al.*
U.S.D.C. Nev. Dist., Case No. C-125-ECR (Subfile No. C-125-B)

I, **Helen Jellen**, declare that I am over 18 years of age, and not a party to the within cause; my business address is 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004. I served a true copy of the attached


**STATE OF CALIFORNIA'S NOTICE REGARDING SERVICE
UPON STATE OF CALIFORNIA**

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

SEE ATTACHED SERVICE LIST

Each said envelope was then, on February 18, 2000, sealed and deposited in the mail in San Francisco, California, the county in which I am employed, with the fees thereon fully prepaid. Executed on February 18, 2000, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.


HELEN JELLEN

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